

to fraud and irregularity, the result of the election was contrary to the clearly defined wish of the constituency involved. The committee is of the opinion that contestant has failed to carry this burden.

The report cited *Bailey v Walters* (6 Cannon's Precedents §166) in affirmation of the proposition that "the House will not erect itself nor will it erect its committees as mere boards of recount."

The committee found that contestant had not shown fraud or irregularity sufficient to compel a recount. The committee considered and rejected the informal recount taken by contestant in Woodbury County in connection with an official local election recount taken thereby which the candidates of the opposing political party had increased, rather than decreased, their vote totals.

Mr. Thomas called up House Resolution 419⁽¹⁸⁾ as privileged on Mar. 11, 1940, the same day the committee submitted its report. Without debate and by voice vote, the House agreed to the resolution recommended in the committee report that—

Resolved, That Albert F. Swanson is not entitled to a seat in the House of Representatives in the Seventy-sixth

Congress from the Ninth Congressional District of Iowa.

Resolved, That Vincent F. Harrington is entitled to a seat in the House of Representatives in the Seventy-sixth Congress from the Ninth Congressional District of Iowa.

Note: Syllabi for *Swanson v Harrington* may be found herein at §12.3 (balloting irregularities); §13.4 (failure to exhaust state remedy); §40.1 (justification for recount of ballots); §41.1 (exhaustion of state remedies).

§ 51. Seventy-seventh Congress, 1941–42

§ 51.1 *Miller v Kirwan*

On Jan. 10, 1941, John W. McCormack, of Massachusetts, the Majority Leader, called up as privileged the following resolution (H. Res. 54):⁽¹⁹⁾

Whereas Locke Miller, a resident of the city of Youngstown, Ohio, in the Nineteenth Congressional District thereof, has served notice of contest upon Michael J. Kirwan, the returned Member of the House from said district of his purpose to contest the election of said Michael J. Kirwan; and

Whereas it does not appear that said Locke Miller was a candidate for election to the House of Representatives

18. 86 CONG. REC. 2662, 76th Cong. 3d Sess.; H. Jour. 230.

19. 87 CONG. REC. 101, 77th Cong. 1st Sess.; H. Jour. 55.

from the Nineteenth Congressional District of the State of Ohio, at the election held November 5, 1940, but was a candidate for the Democratic nomination from said district at the primary election held in said district, at which Michael J. Kirwan was chosen as the Democratic nominee: Therefore be it

Resolved, That the House of Representatives does not regard the said Locke Miller as a person competent to bring a contest for a seat in the House and his notice of contest, served upon the sitting Member, Michael J. Kirwan, is hereby dismissed; and no petition or other paper relating to the subject matter contained in this resolution shall be received by the House, or entertained in any way whatever.

The resolution was thereupon agreed to without debate and by voice vote by the House. Thus the House dismissed the contest without the contest having been referred to the Committee on House Administration, and therefore without committee action and consideration.

Note: Syllabi for *Miller v Kirwan* may be found herein at §§4.4, 4.5 (House power of summary dismissal of election contests); §19.4 (contestants as candidates in general election); §42.4 (resolution disposing of contest as privileged); §44.2 (form of resolution disposing of contest).

§ 52. Seventy-eighth Congress, 1943-44

§ 52.1 Clark v Nichols

On May 11, 1943, the Speaker laid before the House a communication from the Clerk of the House⁽²⁰⁾ which notified the House of the pending election contest between E. O. Clark, contestant, and Jack Nichols, contestee, from the Second Congressional District of Oklahoma. It related that contestant had, on Dec. 5, 1942, notified contestee of his intention to contest his election of Nov. 3, 1942, and that contestee had filed timely answer thereto. Enclosed with it was a letter from contestee asking the House to prevent contestant from further proceeding in the contest, as contestant had not complied with the requirement that testimony taken for contestant be forwarded to the Clerk of the House within the 30 days (based on the former statute, 2 USC §223, now 2 USC §231). The Clerk's communication was referred on May 11, 1943, to the Committee on Elections No. 3 with accompanying papers and ordered printed as a House document.

20. H. Doc. No. 201, 89 CONG. REC. 4243, 4244, 78th Cong. 1st Sess.; H. Jour. 319.